



In re Estate of the Late Barchok Arap Koskei alias Barchok A Koske alias Barchok Arap Koske (Deceased) (Succession Cause 236 of 2015) [2023] KEHC 21418 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21418 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 236 OF 2015**

JK SERGON, J

JULY 27, 2023

BETWEEN

LUDIA CHEPKIRUI KOSKE 1ST PETITIONER

ANNA CHERONO 2ND PETITIONER

AND

JOHNSTONE KIPCHIRCHIR ARAP SIGEI APPLICANT

RULING

1. The 3rd petitioner/applicant herein has filed summons for rectification of grant vide chamber summons dated July 23, 2021, which application is opposed and the same is subject to this courts determination.
2. The 3rd petitioner/applicant herein has filed summons for rectification certificate of confirmation of grant issued to Johnstone Kipchirchir Arap Sigei, Ludia Chepkirui Koske and Anna Cheronon on October 12, 2016 and further that the description of the deceased's property in the schedule of assets attached to the certificate of confirmed grant issued on October 12, 2016 be rectified to include the plots known as Plot No. 376, Plot No. 385, Plot No. 387, Plot No. 4 and Plot No.s 363 upto 392, Plot No. 390 which are comprised in Land Parcel No. Kericho/Chesinende/250.
3. The application for summons of rectification is supported by the affidavit of Johnstone Kipchirchir Arap Sigei the 3rd petitioner/applicant herein.
4. He avers that the grant of letters of administration in respect to the estate of the deceased herein were made and the same confirmed on October 12, 2016 attached and marked as JKS-1 is a copy of the certificate of confirmed grant.
5. He avers that upon going through the confirmed grant he realized that the confirmed grant contained errors and/or omissions in regard to the assets of the estate of the deceased and that the rectified grant



- needs to be amended to include the plots known as Plot No. 376, Plot No. 385, Plot No. 387, Plot No. 4 and Plot Nos. 363 upto 392, Plot No. 390 which are comprised in Land Parcel No. Kericho/Chesinende/250.
6. He avers that it is desirable that the rectification prayed to be allowed in the interests of justice and that the true position of all the properties of the deceased to be portrayed and/or reflected.
 7. The 1st petitioner/respondent filed a replying affidavit with the authority from her co-petitioner, the 3rd petitioner/respondent herein.
 8. She avers that the application for rectification of grant is mischievous, misleading and an abuse of the court process and further that the deceased herein left only two properties namely L.r No. Kericho/chesinende/ 250 and L.r No. Bomet/chebunyo/70 which properties were equally distributed as per certificate of confirmation of grant dated October 12, 2016 and it was therefore not true that the deceased left behind other properties which were not included in the grant as alleged by the 3rd Petitioner in his summons for rectification of grant.
 9. She avers that the properties listed in the summons for rectification do not exist hence the reason why the 3rd Petitioner did not annex any certificates of official search or certified copies of green cards for the alleged properties and rather that the photographs annexed by the 3rd petitioner are of developments contained in parcel L.R No. Kericho/chesinende/250. She maintained it was for this very reason she vehemently opposed the application for rectification of grant issued by this court and further faulted the 3rd Petitioner for failing to present any proper grounds warranting rectification of the said grant.
 10. She finally avers that the conduct of the 3rd petitioner was inimical to the interest of justice as the grant herein was issued 5 years ago and they were yet to enjoy their inheritance on account of the 3rd Petitioner's actions, it was therefore in the interest of justice to have the matter brought to a conclusion.
 11. The 3rd petitioner filed a further replying affidavit in which he avers that before his father died he subdivided the land known as title no. Kericho/chesinende/250 that his father paid for subdivision and change of user. After which the land parcel was divided into plots no. 359 upto 385. He further avers that his father sold the following plots 387, 389, 385, 390 and 376 and attached copies of the sale agreements and that these bona fide purchasers were not included as creditors to the estate and they have since developed the said properties.
 12. The 3rd Petitioner avers that the bona fide purchasers of the said plots are creditors to the estate of his father which position inadvertently does not reflect in the confirmed grant and hence they stood to suffer irreparably.
 13. The 3rd Petitioner filed submissions in support of the application for rectification and reiterated that his application for rectification was premised in section 74 of the *Law of Succession Act* and rule 43 (1) and 73 of the *Probate and Administration Rules* and cited the case of *Re Estate of Henry Mwithimbu Karigu (Deceased)* in support of his case.
 14. He maintained that he did not have an issue with land parcel L.r No. Bomet/chebunyo/70 but raised issue with the description of L.r No. Kericho/chesinende/ 250 which was no longer a freehold property but a leasehold property. He maintained that he was seeking for the subdivided plots to be shown and described in the schedule of assets in respect to L.r No. Kericho/chesinende/ 250 for purposes of clarity as to what constituted the estate of the deceased and took issue with the minor error of description of the deceased property in respect to L.r No. Kericho/chesinende/250 which is now leasehold property constituted by commercial plots which plots have been developed into shops and residential areas.



15. The 1st and 2nd Petitioners filed submissions opposing the instant application in which they maintained that the deceased died intestate and left only two properties namely L.r No. Kericho/chesinende/ 250 and L.r No. Bomet/chebunyo/70 and further that other alleged properties of the deceased were non-existent and in any event the 3rd Petitioner had not supplied official searches, green cards and/or copies of title deeds to prove otherwise.
16. They contended that the 3rd Petitioner had not shown any reasonable cause to warrant the rectification of the confirmed grant and cited the case of *In the matter of the Estate of Geoffrey Kinuthia Nyamwinga (deceased)* [2013] eKLR in support of their case.
17. They therefore urged this court to dismiss the summons for rectification of grant with costs and uphold the confirmed grant dated 12th October, 2016 and further that the Deputy Registrar be directed to sign the mutation and transfer forms on behalf of the 3rd Petitioner who has proven to be a stumbling block to the distribution of the estate of the deceased. They cited the case of *Mahmoud Omar v Awadh Swale Said & 3 Ors* [2017] eKLR where the petitioners sought orders against the defendants to be compelled to sign transfer documents.
18. I have considered the summons for rectification of grant, the replying affidavit in opposition of the application of rectification, further replying affidavit in support of the instant application and the parties submissions. I find that the issue is what forms the estate of the deceased. I have considered the pleadings and documentary evidence adduced and I find that the deceased died intestate only two properties namely L.r No. Kericho/chesinende/250 and L.r. No. Bomet/chebunyo/70 which fact is not in contention. I find that the parties jointly for letter of administration of the estate of the deceased which were issued on 17th September, 2015 subsequently beneficiaries agreed on the mode of distribution of the two land parcels, they appeared in court and certificate of confirmation of grant issued by this court on October 12, 2017. I have considered that application for rectification of grant and I find that it does not raise any grounds warranting this court's intervention it is therefore in the interest of justice to have this Succession Cause concluded in its entirety.
19. Accordingly, I find that the summons for rectification of grant dated July 23, 2021 lacks in merit and I dismiss it.
20. I hereby uphold the certificate of confirmation of grant dated October 12, 2016.
21. The 3rd petitioner is hereby directed to sign mutation and transfer documents within thirty (30) days from the date of this ruling, failure to which the Deputy Registrar is directed to sign the mutation and transfer documents in place of the Petitioners.
22. This being a family matter, each party to bear its own costs of the application dated July 23, 2021.

DATED, SIGNED AND DELIVERED THIS 27TH DAY OF JULY, 2023

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J.K. SERGON

JUDGE

In the presence of:

C/Assistant - Rutoh

Weldon Ngetich for Protestor

Mutai for 1st & 2nd Petitioners

